

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONINO MESINA, DEFENDANT AND APPELLANT.*G. R. No. 17287. August 18, 1921*

Ponente: JOHNSON, J.

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On the 12th day of April, 1918, a complaint was presented in the court of the justice of the peace of the municipality of Malabon of the Province of Rizal, charging the defendant with the crime of estafa. Upon said complaint. the defendant was duly arrested, arraigned, tried, found guilty and sentenced by said justice of the peace to be imprisoned for a period of one month and one day of arresto mayor, to return to the offended person a bicycle, the property alleged to have been fraudulently appropriated by the defendant, and to pay the costs. From that sentence he appealed to the Court of First Instance, where he was again tried, found guilty of the crime charged in the complaint and sentenced to be imprisoned by the Honorable Manuel Camus for a period of one month and one day of arresto mayor and to pay the costs. From that sentence the defendant appealed to this court.

In his first assignment of error he alleges that the court of the justice of the peace of the municipality of Malabon, Province of Rizal, had no jurisdiction to try him. The facts as they appear in the record may be stated as follows:

- (1) That Carmen Villongco was the owner of a tobacco factory in the municipality of Obando of the Province of Bulacan;
- (2) That the defendant was an employee in said tobacco factory;
- (3) That in the month of November, 1917, Carmen Villongco purchased a bicycle to be used by the defendant while he was in the employ of said factory and delivered the same to him upon condition that it should be returned to the owner of said factory at the termination of his employment;
- (4) That the defendant after leaving the employ of Carmen Villongco in said factory, instead of returning the same to Carmen Villongco, sold it to Modesto Manalaysay, who lived in the municipality of Obando;
- (5) That at the time the bicycle in question was delivered to the defendant it was agreed and understood that when he ceased to be employed in said tobacco factory he was to deliver the said bicycle to the owner in the municipality of Malabon;
- (6) That the defendant not only failed to deliver the bicycle to its owner in the municipality of Malabon but sold it to another person in the municipality of Obando.

The record clearly shows that under the contract between the owner of the bicycle and the defendant, it was the duty of the latter to deliver the same to its owner in the municipality of Malabon. He having failed and refused to comply with his obligation in the municipality of Malabon, the crime charged against him was committed there in that municipality, and it follows that the justice of the peace of the municipality of Malabon had jurisdiction to hear and determine the case. (U. S. vs. Cardell, 23 Phil., 207; U. S. vs. Santiago, 27 Phil, 408.)

Following the doctrine heretofore announced by this court, we are of the opinion and so decide that the justice of the peace of the municipality of Malabon had jurisdiction to hear and try the case.

In his second assignment of error the appellant contends that the evidence adduced during the trial of the cause does not show that he is guilty of the crime charged. The Attorney-General, in a carefully prepared brief in which he analyzes all of the evidence adduced during the trial of the cause, reached the conclusion that the evidence was sufficient to show that the defendant was guilty of the crime charged in the complaint beyond a reasonable doubt. With that conclusion of the Attorney-General we fully agree. The Attorney-General, however, argues that the penalty imposed in the lower court should be modified and that the defendant should be sentenced in accordance with the provisions of paragraph 5 of article 535 in relation with paragraph one of article 534 of the Penal Code, in the medium degree of *arresto mayor*, or with the penalty of two months and one day and to pay the costs. With that recommendation of the Attorney-General we also agree. Therefore, the sentence of the lower court is hereby modified and it is hereby ordered and decreed that the defendant be sentenced to be imprisoned for a period of two months and one day of *arresto mayor* and to pay the costs. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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